IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 263 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AGRICULTURE UNIVERSITY

Versus

ANAND NAGARPALIKA

Appearance:

1. Special Civil Application No. 263 of 1995
MR NV ANJARIA Advocate for Petitioner
MR DC RAVAL Advocate for MR ANAND, Advocate for Respondent No. 1
MS.HARSHA DEVANI, AGP for Respondent No. 2-3

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 18/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI FOR THE COURT)

#. The petitioner, Gujarat Agricultural University, incorporated under the provisions of the Gujarat Agricultural University Act, 1969, seeks a direction for setting aside the levy of property tax on its campus by the respondent-Municipality pursuant to its decision dated 29th June, 1994 and 28th September, 1994, and quashing the bills for levy of property tax.

#. The petitioner's case is that the campus of the University consists of 900 Acres of land, wherein there are a college, hostels and teachers' quarters, besides the agricultural farm. According to the petitioner, its properties are exempt from payment of property tax under the provisions of the Gujarat Municipalities Act, 1963. Earlier, in 1947, the respondent-Municipality attempted to levy and impose property tax on the properties belonging to the Institute of Agriculture, which was taken over by the Gujarat Agricultural University under the provisions of the Act. However, by judgment and order dated 28th April, 1953, passed in Second Appeal No. 590 of 1951 at Annexure "A" to the petition, the High Court of Bombay held that the buildings of the Institute of Agriculture were exempt from payment of house tax. According to the petitioner, even Proviso to Section 99 of the Gujarat Municipalities Act, 1963 exempted the property tax in respect of any building belonging to the government. The petitioner has relied upon the provisions of Section 39 of the Gujarat Agricultural University Act to point out that, it is a University funded by the State Government, and has stated that under the resolution of 14th September,1976, rules were framed by the State Government, governing the grant of financial assistance to the University. Any income received by the University was required to be credited to the State Government. The University is an Agricultural Research Organisation which carries out research through the State of Gujarat and is not a private institution. It is responsible for the agricultural extension education activities in the State necessary to communicate and demonstrate to the cultivators the findings and development of agricultural research essential to improve rural living and to increase agricultural production with special emphasis on food production and utilization. According to the petitioner, having regard to the fact that the University has taken over the Institute of Agriculture, Anand, which was originally a government institution and was exempt from payment of property tax, it was just and proper to continue the exemption in

respect of the property of the University.

#. The respondent-Municipality has raised the contention that in view of statutory remedy of appeal provided by Section 138 of the Gujarat Municipalities Act, 1963, the petition ought not to be entertained. In its affidavit-in-reply, it is emphasized that the University avails of all the amenities provided by the Municipality within its area and, therefore, it was liable to pay the property tax. It is pointed out that the properties which are vested in the University, are no more properties of the government and, therefore, the exemption contemplated by Section 99 of the Gujarat Municipalities Act was not attracted in case of this property. It is also contended that the University charges rent for staff quarters, hostels, shops which are within its campus and, therefore, the property tax is recoverable from the University which houses the premises for commercial and other purposes.

#. The learned counsel for the petitioner-University argued that since the property of the Institute of Agriculture which belonged to the University became the property of the University, on the Institute of Agriculture being handed over to the University, the exemption which was earlier granted and recognized by the decision by the Bombay High Court, a copy of which is at Annexure:A to the petition, continued to operate and it was not open for the Municipality to recover the property tax in respect of the same property in face of the decision of the High Court of Bombay. It was submitted that having regard to the historical background of transfer of the Institute of Agriculture, which was run by the State Government, to the University and the exemption from property tax that already existed, the property in question should, for all practical purposes, be considered to be the property belonging to the government for the purpose of exemption under Section 99 of the Gujarat Municipalities Act. It was also faintly argued that the University campus was outside the municipal area and, therefore, no tax was payable by the University in respect thereof.

#. The learned counsel for the Municipality on the other hand, argued that, once the property ceased to be the property of the government by virtue of the University having become the owner of the property under the provisions of the Gujarat Agricultural University Act, the exemption, if any, which was recognized in respect of the property, which earlier belonged to the State Government, in the decision of the High Court of Bombay,

a copy of which is at Annexure:A to the petition, could not enure in favour of the University after the land vested in the University and ceased to be the property belonging to the government. It was submitted that the recovery of municipal tax ought not to be stayed, because, local body would otherwise suffer immense hardship in the running of its administration.

#. There is no dispute about the fact that the Institute of Agriculture which was run by the government was handed over to the University by virtue of the provisions of the said Act. Under Section 51(5) of the Gujarat Agricultural University Act, it was provided that the control and management of all educational institutions of the Department of Agriculture and Department of Animal Husbandry, Fisheries Department and all such other Departments of the State Government as the State Government may, by notification in official gazette, specify in this behalf shall, from such date as the State Government may by order specify, be transferred to the University; and thereupon all properties, assets and liabilities of the State Government in relation to such institution shall stand transferred to, vest in, or devolve upon, the University. Thus, the properties of the Institute of Agriculture stood vested in the University by virtue of Section 51(5) of the Gujarat Agricultural University Act and thereafter they were not the properties belonging to the State Government so as to merit automatic exemption from taxes under Section 99 of the Gujarat Municipalities Act in absence of any statutory provision.

#. However, the matter does not rest at that. It is clear from the provisions of Section 278 of the Gujarat Municipalities Act, which is a special provision for agricultural area that, if in respect of any area within the limits of a municipal borough the State Government is of the opinion that the area predominantly consists of unoccupied land or land used for agricultural purposes and is mostly unoccupied by houses other than farm buildings, it may, after consulting the municipality, by notification in the official gazette, declare the area to be an agricultural area. Such declaration shall state boundaries of the area and the place where plan of the area may be available for inspection. It is further provided that, on the publication of such declaration, notwithstanding anything contained in the said Act, the consequences which are enumerated in clauses (a), (b) and (c) to Sub-section (2) of Section 278 shall ensue. The consequence contemplated by clause (b) is that, in the said area covered under the declaration, the Municipality

shall not be required to make provision for matters specified in Section 87 and none of the taxes mentioned in Section 99 shall be leviable by the Municipality. It is also provided by sub-section (3) of Section 278 that, if at any time after the making of such declaration, the State Government is satisfied after an inquiry that a part of the area which is declared as agricultural area, has ceased to be predominantly used for agricultural purposes and is occupied by houses, the area likely to cease to be so used it may, by notification, direct that the declaration made under sub-section (1) shall cease to apply.

7.1 Section 278 expects the State Government to form its opinion on the aspect whether any area predominantly consists of unoccupied land or land used for agricultural purposes. The fact that the Institute of Agriculture, Anand, was run by the government and on the creation of the Agricultural University it was handed over to the University and that its property vested in the University under Section 51 of the Act was on the records of the State Government. The University was established on 17.9.1969 under Section 3 (1) of the said Act and was a body corporate competent to acquire and hold property. The University was established and incorporated for the development of agriculture including animal husbandry and allied services in the State of Gujarat with the avowed objects of making provision for imparting education in agriculture and furthering the advancement and prosecution of research in agriculture (as defined in Sec. 2(2) of the Act). From the very nature of the objects of the University and its powers and functions spelt out in Sections 5 and 7 of the Act it was apparent that vast areas of land would be held by the University, which would consist of unoccupied land or land used for agricultural purposes in various parts of the State, in order to achieve the objects and purposes underlying the Act. Thus, when the State Government, by notification in the official gazette transferred the control and management of the Institute of Agriculture, Anand to the University, and thereupon all properties and assets and liabilities of the State Government in relation to the said institution stood transferred to and vested in or devolved upon the University under the provisions of sub-section (5) of Section 51 of the said Act of 1969, that was the time when the State Government was itself required to consider whether the land so transferred and vested in the University was required to be declared as `agricultural area' under Section 278 of the Gujarat Municipalities Act, 1963.

7.2 It is stated by the petitioner-University, without any dispute, that a large part of its land consisted of farm land. The purposes for which the Agricultural University is set up are closely connected would obviously require use of vast area of land for the development of agriculture. The land of the Institute of Agriculture, Anand, when it was controlled and managed by the government, was already exempt from payment of property tax and the same land vested in the University by virtue of the provisions of Section 51 (5) of the Act. The State Government, therefore, ought to have taken this aspect into consideration and decided whether the land belonging to the Institute of Agriculture, Anand, which now vested in the University, should be declared as `agricultural area' under the provisions of Section 278 of the Gujarat Municipalities Act.

#. It would, therefore, be appropriate for the State Government to consider the matter in light of the provisions of Section 278 of the Gujarat Municipalities Act, in order to decide whether the area in respect of which the Municipality is trying to impose property tax should have been declared from the date when it was transferred to the University, as an agricultural area under the provisions of Section 278 of the Gujarat Municipalities Act, after consulting the Municipality. The learned counsel for the University states that the University will make a detailed application in context of the provisions of Section 278 of the Gujarat Municipalities Act, 1963 giving necessary particulars for getting the area in question to be declared as an agricultural area thereunder. The State Government is expected to consider the matter in light of the provisions of Section 278 of the Municipalities Act and take a decision expeditiously. Recovery on the strength of the proposed action of the Municipality has remained stayed by virtue of the interim orders, and having regard to the facts and circumstances of the case, it will be proper to direct that no recovery should be effected from the University, until a decision is taken by the State Government in light of provisions of Section 278 of the Municipality Act on an application which will be presented to it by the petitioner-University, within four weeks from today.

#. We accordingly direct that on an application being made by the petitioner-University to the State Government in respect of the property in question for declaring the area as an agricultural area under Section 278 of the Gujarat Municipalities Act, 1963, the State Government shall consider the same and take a decision under the

provisions of Section 278(1) expeditiously. Until such decision is taken, the recovery which is challenged in this petition will not be effected. Rule is made absolute accordingly, with no order as to costs.

[R.K. ABICHANDANI, J.]

[KUNDAN SINGH, J.]
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